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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43980
Plaintiff-Respondent,)	
)	Valley County Case No.
v.)	CR-2015-3022
)	
TAYLOR ELLISON SMITH,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Smith failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with seven years fixed, for aggravated battery, and a concurrent five-year fixed sentence for battery on a police officer?

Smith Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Smith pled guilty to aggravated battery and battery on a police officer, and the district court imposed a unified sentence of 15 years, with seven years fixed, for aggravated battery, and a concurrent five-year fixed sentence for battery on a police

officer. (R., pp.62-66.) Smith filed a notice of appeal timely from the judgment of conviction. (R., pp.86-88.)

Smith asserts his sentences are excessive in light of his substance abuse, mental health issues, purported remorse, and family support. (Appellant's brief, pp.3-6.) The record supports the sentences imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for aggravated battery is 15 years. I.C. § 18-908. The maximum prison sentence for battery on a police officer is five years. I.C. § 18-915(3). The district court imposed a unified sentence of 15 years, with seven years fixed, for aggravated battery, and a concurrent five-year fixed sentence for battery on a police officer, both of which fall within the statutory guidelines. (R., pp.62-66.) At

sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Smith's sentences. (Tr., p.58, L.24 – p.64, L.12.) The state submits that Smith has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Smith's convictions and sentences.

DATED this 17th day of August, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of August, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p style="text-align: right;">Page 55</p> <p>1 in the CAP program here, that rider program. 2 It's not the really short form CAP 3 rider. I think it addresses all these issues that 4 Mr. Smith does need addressed if he is going to be 5 a contributing member of society. He has the 6 potential to do it. I mean, since I've been 7 talking with him, he has been fairly soft spoken, 8 very cooperative to deal with. 9 The court came in here. He came in. 10 He waived. He pled guilty. He's here to take 11 accountability. He is looking at the rest of his 12 life. He is under no illusions that he is going 13 to walk out of here today and be placed on 14 probation. He understands that. But I do think 15 he would be a good candidate for that type of 16 programming. 17 If the court is hesitant to send him on 18 a rider and just thinks there just needs to be 19 more of a punishment component to this, I would 20 ask that the court not impose the seven plus 21 eight. I think the court can get the message 22 across as far as punishment, as far as retribution 23 without having to go up that high. I mean, I 24 understand there does have to be an escalation for 25 punishment. But considering the last punishment,</p>	<p style="text-align: right;">Page 56</p> <p>1 the total, he did really 1-1/2 years fixed, I 2 think the court can accomplish that without 3 getting up to seven years. 4 In fact, I think what the court can hit 5 would be to exceed his entire last sentence with 6 just the fixed portion and give him the 3-1/2 7 years as a fixed portion of his sentence. And 8 then 11-1/2 indeterminate. That's a very 9 significant sentence. That's a 15-year sentence, 10 and Mr. Smith understands there has to be a long 11 tail. And this court wants, is going to want some 12 type of supervision even after he is released, and 13 he is not arguing for less than that. 14 But, Your Honor, I think it is quite a 15 long time. He has been incarcerated since this 16 has happened. He does have a family, the court 17 can see, who understands that he does have issues, 18 and they have supported him and want to be there 19 for him when he gets out, want to be a source of 20 support for him. 21 He understands that if he drinks, 22 really all bets are off with him. I mean, it's 23 not only is it going to be a probation violation, 24 but he leads him to much less worse things. 25 I mean, the Yellow Pine Harmonica</p>
<p style="text-align: right;">Page 57</p> <p>1 Festival, in and of itself, is not a great place 2 to be for someone who is trying to stay sober. 3 But his sobriety is directly related to his 4 success whether he is out on parole or out on 5 probation, and that's something he needs to get a 6 handle on. Because all the other issues he's had 7 with anger and aggression get magnified when he 8 drinks. And so I think that's number one for him, 9 addressing that, addressing the thinking errors. 10 You know, he does have a career path 11 where he does feel comfortable. He does love 12 doing tattoos as a tattoo artist. That's 13 something he does want to be able to pursue. He 14 has had other jobs. He does have a child to 15 support as well. 16 He understands there is going to be 17 some significant punishment from this, Your Honor, 18 but I think with some programming and help and 19 given the fact what he is looking at here is doing 20 more time than he's ever done in the past. We are 21 at the point where he looking in the eye of a very 22 significant sentence, and he understands that. 23 It's important for him to know that if 24 he screws up, it's not just a few months here or a 25 few months there in the county jail. He is</p>	<p style="text-align: right;">Page 58</p> <p>1 looking at going away for quite some. From what 2 the state is asking for is very significant time, 3 and what we're recommending is a few years in the 4 state penitentiary. 5 So with that, Your Honor, I'll leave 6 that in your discretion and ask the court to give 7 him a fair sentence. 8 THE COURT: All right. Thank you, 9 Mr. Erikson. 10 Mr. Smith, would you like to make a 11 statement? 12 THE DEFENDANT: Yes. 13 THE COURT: Go ahead. 14 THE DEFENDANT: I just want to say I'm sorry 15 for what I did, and I regret even drinking and 16 going to Yellow Pine. That was a stupid decision. 17 That place is designed just to get trashed. 18 So I'm trying to take this time to try 19 and get recovery, my recovery figured out so I can 20 have a better future and be there for my kid and 21 my family and stuff. They deserve better. But 22 that's all I have to say. Thank you. 23 THE COURT: Thank you, Mr. Smith. 24 Of course, as I noted at the outset, I 25 have read all the presentence materials, including</p>

<p style="text-align: right;">Page 59</p> <p>1 the psychological evaluation from Dr. Sombke, 2 including the letters of support that were handed 3 to me today. Idaho law directs me to consider 4 four factors in determining an appropriate 5 sentence. The preeminent of those factors is 6 protecting society, fashioning a sentence that 7 would protect society. I'm also to consider 8 deterrence, rehabilitation of the offender, and 9 punishment for the offense. 10 Now, I think it's clear that this 11 defendant is in need of rehabilitative programming 12 for certain. Mr. Smith has a significant history 13 of drug and alcohol use. Now, I understand that 14 he is indicating that the use of illegal drugs, 15 he's left in the past even before this incident, 16 and I'll accept his word on that. 17 It's clear nevertheless that the 18 defendant does have a significant problem with 19 alcohol, that he abuses alcohol, and that that has 20 played a significant role in this incident and at 21 least some of the defendant's prior run-ins with 22 the criminal justice system. So the defendant 23 certainly is in need of programming and assistance 24 to get on top of that problem. 25 Mr. Smith also has anger management</p>	<p style="text-align: right;">Page 60</p> <p>1 issues. That's clear. And he is also in need of 2 treatment to deal with those kinds of problems as 3 well as needing mental health treatment to deal 4 with mental health conditions that he appears to 5 have and has, according to Dr. Sombke in his 6 mental health evaluation, a borderline personality 7 disorder and antisocial personality disorder. 8 The defendant has certainly a lot of 9 problems that he is going to need to work on and 10 is going to need significant treatment and help to 11 work on. These aren't things that can just be 12 readily conquered or addressed successfully by a 13 person acting on his own. 14 Now, it's clear, of course, as I 15 mentioned, that the abuse of alcohol played a 16 significant role in this incident. It appears 17 that the defendant lacks much of any measure of 18 inhibition when he is drinking, that he is not 19 able to think clearly and act responsibly when he 20 is under the influence leading to do things like 21 he has done in this case. 22 Now, I mentioned that protection of 23 society is the preeminent sentencing factor. 24 That, of course, plays a significant role in the 25 sentence I'll impose in this case. While the</p>
<p style="text-align: right;">Page 61</p> <p>1 defendant is in need of treatment and 2 rehabilitation, as I've noted, it doesn't appear 3 to me that defendant could be safely released back 4 into the community until he has had a significant 5 opportunity to receive appropriate treatment, 6 which he can receive in a structured setting with 7 the Idaho Department of Corrections. 8 He will need to do that well before he 9 could be released safely into the community. And 10 it appears that there is good reason in this case 11 just for a period also of incarceration even 12 regardless of whether it's rehabilitative as a 13 punishment and as an incapacitation factor while 14 the defendant is behaving in the way he has 15 behaved here. 16 So I think all of these factors combine 17 to indicate that a prison sentence is the 18 appropriate disposition in this case as opposed to 19 some lesser alternative, either a rider or a 20 probation sentence. 21 Prison is warranted based on the 22 severity of the incident based on the defendant's 23 criminal history, which we have discussed some 24 today, based on the risk he presents to the 25 community if not incarcerated while in his current</p>	<p style="text-align: right;">Page 62</p> <p>1 state. 2 Now, I also take note that this 3 happened, this incident happened, while the 4 defendant was on parole in California, and that 5 the defendant has had some history of time on 6 probation in the past that was unsuccessful. So 7 the defendant has a history of having trouble 8 abiding by the rules of society, and, further, 9 when he acts out, there is a significant history 10 of him doing so in a violent way. 11 Indeed in the psychological evaluation, 12 Dr. Sombke concluded that the defendant presented 13 a very high potential for future violence, that he 14 showed some psychopathic personality traits, and 15 that his capacity for empathy was not very well 16 developed. These are all things that cause a 17 great deal of concern to me, Mr. Smith, in terms 18 of how you would do if you were released now back 19 into the community or in the near future. 20 Now, there is certainly some mitigating 21 factors that I have taken note of in the 22 presentence materials. I would include among 23 those factors that you have some support from 24 family, that you have, as your counsel has said 25 here today, you've accepted responsibility for</p>

<p style="text-align: right;">Page 63</p> <p>1 this offense. You waived your preliminary 2 hearing, pleaded guilty, and are ready to accept 3 the punishment that results from that. And that 4 is certainly to your credit. 5 I also noted from the presentence 6 investigation that you had a very difficult 7 childhood with a father who doesn't seem to have 8 been a father in the positive sense of that word. 9 And those kinds of things are difficult for people 10 to overcome sometimes, and I understand that. 11 I note you also have had a history of 12 mental health problems dating back to childhood, 13 leading to psychiatric hospitalizations at a very 14 young age. And no doubt that all of these other 15 problems tied into your starting to use alcohol at 16 a very young age, even preteen, and experiment 17 with illegal drugs from there. 18 Now, as I've said, I think for the 19 reasons I have noted, that a prison sentence is 20 appropriate. I think there is some good in you, 21 and I think it can be found and developed, and 22 hopefully we can see the best side of you in the 23 future instead of the side that makes these bad 24 judgments and commits these kinds of crimes. 25 Of course, you're on parole. You</p>	<p style="text-align: right;">Page 64</p> <p>1 hadn't ought to be at a festival where everyone is 2 drinking. As you said, that was a bad decision. 3 Not just a bad decision, undoubtedly you were not 4 where you were permitted to be while on parole. 5 I think all of these things taken 6 together suggests to me that the plea agreement, 7 the state's recommendation under it is a fair and 8 appropriate resolution of the case. 9 You put people at risk, a significant 10 risk, and there has to be a consequence. I think 11 the plea agreement consequence is a fair one under 12 the circumstances. 13 So, Mr. Smith, on your plea of guilty 14 to the crime of aggravated battery, I find you 15 guilty. I will sentence you to the custody of the 16 Idaho State Board of Correction under the unified 17 sentence law of the State of Idaho for an 18 aggregate term of 15 years. I'll specify a 19 minimum period of confinement of seven years and a 20 subsequent indeterminate period of confinement of 21 eight years. 22 Additionally, on Count 2, battery on a 23 law enforcement officer, on your plea of guilty to 24 that charge, I find you guilty. I will sentence 25 you to the custody of the Idaho State Board of</p>
<p style="text-align: right;">Page 65</p> <p>1 Correction under the unified sentence law of the 2 State of Idaho for an aggregate term of five 3 years, all of which will be determinate time. The 4 sentence on that count will run concurrent with 5 the sentence imposed on the aggravated battery 6 count. 7 You'll be remanded to the custody of 8 the sheriff of this county to be delivered to the 9 proper agent of the state Board of Correction in 10 execution of these sentences. 11 You'll receive credit against these 12 sentences for the time you have spent in custody 13 so far in connection with this case. By our 14 count, that's 154 days. 15 I won't impose a fine. I don't think 16 it would be constructive to do that. I have 17 previously indicated that restitution will be left 18 open insofar as it relates to the expense of the 19 psychological evaluation. Of course, court costs 20 will be imposed as well. 21 Mr. Smith, you have the right to 22 appeal, and if you cannot afford an attorney, you 23 can request to have one appointed at public 24 expense. Any appeal must be filed within 42 days. 25 Counsel will need to return presentence materials</p>	<p style="text-align: right;">Page 66</p> <p>1 to be sealed. 2 Anything else, counsel? 3 MR. EREKSON: No, Your Honor. 4 MS. BROCKMANN: No, Your Honor. Thank you. 5 THE COURT: I wish you well, Mr. Smith. 6 We'll be in recess. 7 (12:03 p.m. The proceedings adjourned.) 8 9 10 11 * * * * * 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>